On October 11, 2011, in a dangerous game of chicken, the city council of Topeka, Kansas, voted 7 to 3 to decriminalize misdemeanor domestic violence cases.\(^1\) This move came in response to the Shawnee County District Attorney, Chad Taylor, notifying the city that the District Attorney’s office would no longer prosecute such cases arising within Topeka city limits due to budgetary constraints.\(^2\) District Attorney Taylor further advised that he would leave all misdemeanor prosecutions, including those for domestic violence, in the hands of city government, choosing instead to focus his office’s limited resources on the prosecution of felonies alone.\(^3\) The District Attorney’s notification was given despite the fact that the budget cuts proposed by the County Commission would not go into effect until 2012.\(^4\) Prior to the announcement, all misdemeanors other than domestic violence were handled by Topeka’s municipal court.\(^5\) The Topeka City Council then advised it would cost the city an estimated additional one million dollars to pay for misdemeanor domestic violence prosecutions.\(^6\)

Approximately half of all the 423 misdemeanor cases filed in Shawnee County in 2010 were related to domestic violence.\(^7\) Kansas defines misdemeanor domestic battery as:

1. Intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or
2. Intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.\(^8\)
A first offense is deemed a class B misdemeanor carrying jail time from forty-eight hours to six months and a fine of $200 to $500. A second offense within a five year period is a class A misdemeanor punishable by ninety days to one year in jail and a fine of $500 to $1000. A third offense within a five year period is a felony punishable by ninety days to one year in jail with a fine of $1000 to $2,500.9

Eighteen people were arrested in September 2011 on misdemeanor domestic violence charges, but all were released without charges being filed; neither the city nor the county were accepting new misdemeanor domestic violence cases.10 However, given the city council’s vote to decriminalize domestic violence cases, the ball is back in the District Attorney’s court, as domestic violence remains a crime under state law.11

This battle over the budget, however, highlights a potentially dangerous trend in the legal system: prosecutorial prioritization. While prosecutorial prioritization is nothing new, especially in times of budgetary constraints and/or increases in overall caseload, the discussion of these priorities in public creates the danger of current and potential offenders believing they can commit crimes of domestic violence without fear of consequence.12

This case study addresses the implications of decriminalizing domestic violence. Part II describes the history of domestic violence legal treatment from a global perspective, compiling evidence from Russia, China, European Union, finally the United States. Parts III and IV gives an overview of current civil and criminal remedies available to domestic violence victims under first United States federal, then state laws. Finally, Part V examines the effects of domestic violence in America from two perspectives: economic and social. This Part describes the impact of domestic violence on individuals and the workplace and the long term implications of domestic violence on victims, victims’ families and society.

II. AN OVERVIEW OF DOMESTIC VIOLENCE IN SOCIETY

Throughout history, domestic violence has been a constant despite differences in cultures or political regimes.. Whether it takes the form of sexual assault, physical assault, homicide, or one of the other myriad forms of abuse, societies struggle with defining otherwise criminal and abhorrent behavior rooted within a domestic, oftentimes familial, relationship. Attitudes of shame, silence, guilt, and fear battle against centuries of entitlement, tradition, and even theological tenets.

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9 Id. § 21-3412(b) (2011).
10 Sulzberger, supra note 1.
12 Id. See also Sulzberger, supra note 1 (“Scott Burns, executive director of the National District Attorneys Association, said that around the country, prosecutors are being forced to prioritize certain types of cases, but that these decisions are rarely discussed in public.”).
Part II provides an overview of this struggle which crosses all land masses and boundaries, a struggle that humanity, not nationality, faces even today. It will unequivocally demonstrate that a government’s failures to intervene in domestic violence and to institute a consistent, structured response lead only to the continuation of abuse.

A. An Overview of Domestic Violence Internationally

1. Russia

In Russia in the late 1500s, the Orthodox Church issued the Household Ordinance, sanctioning the abuse of women and describing how and when a man could beat his wife most effectively. A wife had the same standing as a serf and was subject to a disciplinary system, including death at the hands of her husband if it was warranted. When a group of Russian women revolted, killing their husbands in retaliation for all the abuses they had suffered, they were punished by being buried alive with only their heads left above ground. It was often a tradition in Russian peasant weddings for the groom to hold a whip, symbolizing the beatings to come after the bride returned home with him.

With the Marxist Revolution, women were granted political and legal equality under the Bolsheviks. Less than twenty years later, however, the Communist Party under Stalin engaged in a campaign to restore the “traditional family,” overturning the concept of marriage as a contract between two free and equal individuals. Today, the outlook is not much better:

- An estimated 14,000 Russian women are killed each year in acts of domestic violence.
- Over 70% of married women surveyed reported being subjected to violence during the course of their marriage.

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14 Id.
15 Id.
17 See McCann, supra note 11.
18 Id.
20 Russian Federation, supra note 19, at 18.
Over 50% reported restrictions on their mobility.\textsuperscript{21} Nearly 60% had experienced aggression by a current or former husband, lover, or significant other.\textsuperscript{22} Eighteen percent received regular and/or severe “physical mishandling by their husbands.”\textsuperscript{23} Forty-eight percent of the women who reported being physically assaulted were attacked while pregnant, nursing, ill, or unemployed.\textsuperscript{24} Over 60% of women assaulted experienced varying degrees of trauma, with 3% requiring medical treatment.\textsuperscript{25} Ninety percent had either witnessed domestic violence between their parents or had experienced it first hand in their current relationship.\textsuperscript{26}

Russian statutes neither define nor specifically address domestic violence;\textsuperscript{27} it is still largely viewed as a private matter, not requiring the intervention of law enforcement. In addition, neither local government nor the judicial system is trained or equipped to handle domestic violence cases, should they even be reported and pursued by law enforcement.\textsuperscript{28} Out of approximately twenty-five crisis centers operating within the country, few operate twenty-four hours a day, seven days a week, and there is not a single crisis center located in Moscow, the most populous city in Russia.\textsuperscript{29}

2. China

While Chinese culture is rooted in a pre-Communist belief system touting non-violence and harmony, the Chinese value system does not place an emphasis on such attitudes regarding the treatment of women. Confucianism is fraught with teachings condoning, if not promoting outright, the abuse of women. For example, under the first of three cardinal guides, the ruler/emperor guides his subject, the father guides his son, and the husband guides his wife.\textsuperscript{30} Second, women were to follow the three obediences: a woman must obey her father before marriage, her

\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Id. at 19.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id. at 18.
\textsuperscript{27} Id. at 9, 11–14 (noting that the current regime of law prohibiting violence is gender neutral, and that “[w]hile it is possible to penalize someone for certain acts of violence that may occur in an intimate relationship, the Russian Federation does not have a specific law on violence in the family”).
\textsuperscript{28} Id. at 30–35.
\textsuperscript{29} Id. at 42.
husband after marriage, and her son after the death of her husband.\textsuperscript{31} Third, a woman was to follow the four virtues of morality, proper speech, diligent work, and modest manner.\textsuperscript{32} These Confucian teachings combine with (1) a rigid patriarchal society which views women as nothing more than the property of their family, and (2) a persistent and prevalent view that domestic violence is a private matter to be handled by the family without outside interference.\textsuperscript{33} Findings of the most recent Chinese government survey by the All-China Women’s Federation found significant incidence of domestic violence throughout China:

- Almost 25% of women had experienced domestic abuse in the form of verbal humiliation, physical assault, deprivation of freedom, illegal control of income, or marital rape.
- Only 5.5% of domestic abuse incidents were reported to authorities, with rates of 7.9% in rural areas and 3.1% in cities.\textsuperscript{34}
- Thirty percent of China’s 270 million families experience domestic violence.\textsuperscript{35}

Currently, Chinese law barely touches on domestic violence, China has no set guidelines for arrest of abusers by law enforcement or their prosecution in the legal system, and it has no system providing support services for the victims.\textsuperscript{36}

3. European Union

The European Union defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”\textsuperscript{37} According to the Council of Europe, one European woman in four experiences domestic violence at some point in her life, and between 6 and 10% of women

\begin{itemize}
  \item Id.
  \item Id.
  \item See Tatlow, supra note 34.
  \item See Qin Liwen, Gender Equality and Combating Domestic Violence, IIP DIGITAL, United States of America Embassy, (Feb. 12, 2012) http://iipdigital.usembassy.gov/st/english/publication/2012/02/20120227160902ae0.5071309.html#axzz2211brPUX.
\end{itemize}
suffer domestic violence in any given year. While domestic violence remains very common in the EU and roughly 98% of people in the EU are aware of domestic violence, only 78% of Europeans recognize domestic violence as a common problem, and only 84% consider domestic violence to be unacceptable and always punishable by law. Nevertheless, only 14% of the population is familiar with specific EU measures addressing the problem of domestic violence.

Within the European Union, rates of domestic violence and the laws governing such crimes vary greatly:

- In Poland, the number of domestic violence victims rose from 130,682 in 2007 to 139,747 in 2008. The Act of Counteracting Domestic Violence enacted on July 29, 2005, defined domestic violence in Polish law for the first time, even though battery of a family member is the third most common crime in Poland behind theft and assault.

- In Lithuania, there are no specific laws penalizing domestic violence. As a result, there is no verifiable statistical data on the subject of domestic violence.

- In Sweden, prior to 1982, an assault against a woman was treated as a “private crime” that could only be prosecuted by a victim directly bringing a claim. Following amendments in 1982, such an assault was deemed a “public crime,” permitting authorities to press charges on behalf of the victim. Nevertheless, Sweden does not keep statistics and has been brought to task by Amnesty International over its refusal to prevent, punish, and combat domestic violence.

- In the Netherlands, approximately 40% of the population has experienced some form of domestic violence during their lifetimes, with approximately 500,000 incidents reported annually. While marital rape carries a lesser sentence than rape, spousal abuse carries an enhanced penalty over ordinary battery. The government subsidizes support, legal advice, and shelters for victims of domestic violence.

As these statistics indicate, domestic violence remains a persistent and pernicious problem, even in “developed” countries with structured governmental

38 Id.
39 Id. at 10–11.
40 Id.
42 Id.
43 Id. at 38–41.
responses. However, it is also apparent from these statistics that lack of government intervention and action results in increased frequency and severity of domestic violence incidents.

B. An Overview of Domestic Violence in United States Society

Most western societies, including the United States, are based upon a patriarchal system, wherein the father or husband maintained the central, governing authority over the family. Traditional western male dominance can be traced back to “the laws of chastisement” of early Roman rule, wherein the husband retained the absolute right to physically discipline his wife, even to the point of death, if he, his reputation or his property should be threatened or harmed by her actions.46 In the fifteenth century, the Catholic Church endorsed Friar Cherubino’s “The Rules of Marriage” which permitted a husband to be the judge and executioner over his wife. According to the “Rules,” if a wife committed an offense, the husband could hand out whatever punishment he deemed appropriate. These punishments were actually considered a blessing, as his actions demonstrated his concern for his wife’s soul.47 Likewise, English common law gave a man the right to beat his wife; the phrase “rule of thumb” referred to a husband’s authority to beat his wife, so long as he used a stick no bigger than his thumb.48 Even the venerated Blackstone reasoned that “husband and wife were one, and that one was the husband.”49

When English colonists settled in North America, they brought the principles and rationales of English common law with them.50 Under these principles, family autonomy and privacy were paramount, and the judiciary was loath to intervene unless the husband’s actions exceeded the bounds of “moderate chastisement.”51

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47 See id. See also ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 13 (2000); JOY M. K. BUSSELT, BATTERED WOMEN, FROM A THEOLOGY OF SUFFERING TO A THEOLOGY OF EMPOWERMENT (1989).
49 See SCHNEIDER, supra note 46, 13–14.
50 The Puritans, however, openly banned family violence because it was viewed as an erosion to order within society. See ELIZABETH H. PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIETY 21–22 (First Illinois ed. 2004) (1987) (citing MASS. BODY OF LIBERTIES § 80 (1641), available at http://history.hanover.edu/texts/masslib.html (“Everie [sic] married [sic] woeman [sic] shall be free from bodilie [sic] correction or stripes by her husband, unless it be in his own defence [sic] upon her assault”). Enforcement of such bans was often lacking. Id.
51 See SCHNEIDER, supra note 46, at 14 (discussing Bradley v. State, 1 Miss. (1 Walker) 156 (1824)) (Mississippi Supreme Court stated a man should not be subjected to
Starting in the 1870s, domestic violence became the focus of social reformers, resulting in individual states passing laws banning abuse of women by their husbands.\textsuperscript{52} Despite enacting state laws abrogating a husband’s right to physically abuse his wife and granting legal emancipation to women, women still had limited, if any, recourse for what was still perceived by many as a private matter.\textsuperscript{53} It was not until the twentieth century and the ascendancy of the feminist movement that enforcement of existing laws took hold. As the media spotlighted the issues inherent in family violence, the attendant public outcry led to not only increasing vigilance in the enforcement of existing laws but also the need for additional family safeguards.\textsuperscript{54}

Despite the marked advancements made in the last century—from women being viewed as nothing more than chattel to having the clear and recognized legal right to live free of violence within the home—the statistics are still alarming:

- 1.3 million women were raped [in 2009].\textsuperscript{55}
- Nearly one in five women and one in seventy-one men have been raped in their lifetime.\textsuperscript{56}
- One in six women and one in nineteen men have been stalked during their lifetime.\textsuperscript{57}
- One in four women and one in seven men have been the victim of severe physical violence by an intimate partner.\textsuperscript{58}
- An estimated 1.3 million women are physically assaulted by an intimate partner each year.\textsuperscript{59}
- Eighty-five percent of domestic violence victims are women.\textsuperscript{60}
- Historically, females are most often victimized by someone they know.\textsuperscript{61}

\textsuperscript{52} See Reva B. Siegel, “The Rule of Love”: Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2129–30, 2140–41 (1996) (“Thus, when a wife beater was charged with assault and battery, judges refused to entertain his claim that a husband had a legal right to strike his wife; instead they denounced the prerogative, and allowed the criminal prosecution to proceed. In several states, legislatures enacted statutes specifically prohibiting wife-beating; three states even revived corporal punishment for the crime, providing that wife beaters would be sentenced to the whipping post.”).

\textsuperscript{53} Id. at 2168–69.

\textsuperscript{54} See Davis, supra note 45, at 3.


\textsuperscript{56} Id.

\textsuperscript{57} Id.

\textsuperscript{58} Id.


\textsuperscript{60} Id.

\textsuperscript{61} Id.
Females aged 20 to 24 face the greatest risk of nonfatal intimate partner violence.62

Finally, most cases of domestic violence go unreported to law enforcement.63

While clearly not perfect or uniform throughout the states, every state does have legislation addressing domestic violence. In addition, both public and private institutions continue to provide assistance by way of shelter, legal advice, and education.

III. AN OVERVIEW OF REMEDIES AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE

A. Federal Remedies Available to Victims of Domestic Violence

1. Federal Due Process Claims

Pursuant to 42 U.S.C. § 1983, victims of domestic violence can bring federal constitutional claims under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment against law enforcement officers, law enforcement agencies and/or city governments. In addition, victims also have the right to pursue state tort law claims and possible state constitutional claims as well. This Part will first address federal claims available, along with limitations and exceptions, then available state remedies.

The Due Process Clause of the Fourteenth Amendment states that no state shall “deprive any person of life, liberty, or property, without due process of law.”64 A victim of domestic violence making a §1983 claim “must show (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right.”65 In DeShaney v. Winnebago County Department of Social Services,66 the Supreme Court set forth the limited circumstances under which an individual’s §1983 due process claim could prevail against local authorities. Prior to DeShaney, there was no uniform standard applied to §1983 due process cases where it was that alleged local authorities had not adequately protected an individual from harm. Instead, courts looked to whether a special relationship existed between the state and the plaintiff, as indicated by the existence of any of the following factors: “(1) a protective restraining order; (2) whether the state was aware of the danger faced by the victim (for example, through continual phone calls to the police or some other

62 Id.
63 Id.
64 U.S. CONST. amend. XIV, § 1.
65 Balistri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).
66 See generally DeShaney v. Winnebago County Dep’t of Social Services, 489 U.S. 189 (1989) (there are limited circumstances where the U.S. Constitution imposes affirmative duties of care and protection upon a state).
means of communication); (3) whether the batterer was in custody immediately prior to or at the time of his attack on the victim; and (4) whether the police affirmatively told the victim that she could rely on them for support.” 67

In DeShaney, the mother of a child abuse victim brought a §1983 claim against the Winnebago County Department of Social Services (DSS) claiming that her son, Joshua, had been denied liberty without due process of law by alleging that the DSS failed to intervene and adequately protect him from his father’s persistent and previously documented abuse. 68 The Supreme Court held Joshua’s rights under the Due Process Clause were not violated. 69 According to Browne:

The Court distinguished between negative and positive rights. The Court classified the Due Process Clause as a negative right, meaning that the Due Process Clause forbids the state itself from depriving individuals of life, liberty, or property without due process of law, but does not impose an affirmative obligation on the state to ensure that those interests are not harmed through other means. In contrast, if the Due Process Clause were a positive right, the state would have an affirmative obligation to guarantee certain minimal levels of safety and security; the state would be required to protect the life, liberty, and property of its citizens against invasion by private actors as well as by its own actions. The Court held that the Due Process Clause is a limitation upon state power, not a guarantee of minimal safety or protection from private individuals. “[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.”70

The DeShaney Court specifically rejected the “special relationship” argument that had been upheld in prior cases. 71 The Court reasoned that the agency’s awareness of danger did not give rise to an affirmative duty on the part of the state to protect an individual from harm caused by a third party. 72 Instead, a valid due process claim arises only if there was either some type of state-imposed custodial

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68 See DeShaney, 489 U.S. at 192–93. The father’s second wife had reported the abuse to police, a doctor examining Joshua at a hospital reported suspected abuse, and a subsequent trip to the hospital also raised suspicions. Each time, DDS investigated and concluded there was insufficient evidence of child abuse and returned Joshua to his father. Eventually, the father beat Joshua so severely, that the boy was admitted to the hospital with substantial head trauma and resulting brain damage. Id.
69 Id. at 203.
70 See Browne, supra note 67, at 1303–04 (quoting DeShaney, 489 U.S. at 195).
71 See DeShaney, 489 U.S. at 193–94.
72 Id. at 201 (“[T]he State does not become the permanent guarantor of an individual’s safety by having once offered him shelter.”).
situation involving the victim or the state’s affirmative actions actually created or increased the danger faced by the victim, for which the state could then be held responsible. There are several instances in which state actions can result in a victim being placed in great danger: (1) when authorities act with deliberate indifference, such as when a victim contacts police about domestic violence and the police neither question nor arrest the offender, which can then lead an abuser to believe he will suffer no adverse consequences as a result of his actions; (2) a victim receives assurances that her assailant is in custody and will not be released without prior notification, which the victim does not then receive; or (3) a victim receives an order of protection which authorities fail to enforce. In each circumstance, the state’s actions can place the victim in greater danger than if the state had not intervened at all.

2. Federal Equal Protection Claim

The Equal Protection Clause of the Fourteenth Amendment states that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Victims of domestic violence, overwhelmingly female, can bring suit against state authorities for failure to afford them the same level of protection as other assault victims. Since it is unlikely, if not impossible, for an explicit policy of discrimination to exist, plaintiffs must prove that state authorities acted with discriminatory intent or purpose in its actions. Specifically, “plaintiffs can prevail on a gender discrimination claim involving seemingly ‘gender-neutral’ policies and practices if they show that: (1) defendants had a policy or custom of providing less protection to victims of domestic violence than victims of other violent crimes; (2) discrimination against women was the motivating factor for the defendants’ policy or custom; and (3) plaintiffs were injured as a result of the operation of this policy or custom.”

73 Id. at 201 n.9 (“Had the State by the affirmative exercise of its power removed Joshua . . . and placed him in a foster home . . . we might have a situation sufficiently analogous to incarceration . . . to give rise to an affirmative duty to protect.”).
74 Id. at 201 (“While the State may have been aware of the dangers that Joshua faced . . . it played no part in their creation, nor did it do anything to render him any more vulnerable to them . . . [I]t placed him in no worse position than that in which he would have been had it not acted at all.”).
75 Id. at 199–201.
76 See Browne, supra note 67, at 1312 (citing Pinder v. Commissioners of Cambridge, 821 F. Supp. 376 (D. Md. 1993), Freeman v. Ferguson, 911 F.2d 52 (9th Cir. 1990), Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), cert. denied, 498 U.S. 938 (1990)).
77 U.S. CONST. amend XIV, § 1.
With respect to the first element, plaintiffs are unlikely to establish a formal written policy or directive mandating less protection for victims of domestic violence. Instead, plaintiffs are left to demonstrate a widespread practice or custom on the part of authorities. Probably the most well known of these cases is *Thurman v. City of Torrington.* Over a period of eight months, Tracy Thurman contacted the Torrington Police Department to report increasingly severe instances of domestic violence on the part of her estranged husband, including beatings, stalking and death threats. Officers repeatedly ignored her complaints and refused to arrest her attacker. In the final instance of abuse, police were called yet again and notified of an ongoing physical assault on Tracy, including multiple stab wounds. Not only were the police slow to respond, but once there, stood passively by while Tracy’s husband kicked Tracy in the head. The court ruled that the police, through their persistent inaction, had engaged in a “pattern or practice of affording inadequate protection, or no protection at all, to women who have complained of having been abused by their husbands or others with whom they have had close relations.”

The second element of gender-based discrimination is most centered upon police treatment of victims of domestic violence, as opposed to their treatment of assault victims in general. “This is the best classification scheme for an equal protection claim because it properly defines the problem—that only women, whether single or married, are the victims of domestic violence, and that they are afforded less protection by police than are all other battery victims.” By pursuing relief on the basis of a “crime type” as opposed to gender, plaintiffs would not need to demonstrate police intent to discriminate against women, but rather that police pursue cases involving domestic violence with less vigilance, whether by providing less protection to the victim or by affording greater deference to the perpetrator. This could include chronic failure to respond to domestic violence complaints, delayed response to 911 calls by domestic violence victims, failure to enforce state statutes aimed at protecting victims of domestic violence, or police animus toward victims of domestic violence. Finally, a plaintiff must demonstrate that she was injured directly as a result of such practices or customs.

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80 Id. at 1524–26.
81 Id. at 1527; See, e.g., Didzerekis v. Stewart, 41 F. Supp.2d 840, 845–46 (N.D. Ill. 1999) (plaintiff sued based upon delayed police response to 911 calls from domestic violence victim); McDonald v. City of Chicago, 1994 U.S. Dist. LEXIS 18445, at *1–3 (N.D. Ill. 1994) (battered women sued for police failure to enforce state statutes designed to protect victims of domestic violence); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 701 (9th Cir. 1990) (plaintiff sued on the basis of police animus directed at victim of domestic violence).
82 See Browne, *supra* note 67, at 1316 (emphasis in original).
83 Id.
84 See FUKERODA, *supra* note 78, at 174–78.
IV. STATE REMEDIES AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE

From 1997 through 2003, over 700 new domestic violence legislative initiatives were enacted among the 50 states. These included amendments to existing legislation and new legislation covering such areas as anti-stalking legislation, spousal rape statutes and domestic violence battery laws affecting both civil and criminal processes unique to domestic violence. However, legislation varies dramatically from state to state, indicating a wide disparity in the manner in which domestic violence is viewed. Traditional criminal provisions include prosecution for assault, battery, sexual assault and criminal trespass. Newer criminal provisions include violation of a civil order of protection issued by a court.

However, only 39 states have legislation directed specifically at domestic violence through either new criminal code provisions or sentencing enhancement provisions. Yet even among these states, treatment of domestic violence varies greatly. In some states, a single act of domestic violence may be a felony, while other states require a third domestic violence misdemeanor conviction before felony sentencing is triggered. Similar variations exist in the areas of stalking legislation and civil orders of protection. An in-depth analysis of state legislation in the area of domestic violence indicates California, Minnesota and Wisconsin as having some of the most comprehensive domestic violence legislation. However, as discussed in Part IV-B infra, the true cost of domestic violence to society as a whole is often overlooked and understated.


86 *Id.* at 14 n.40 (setting forth state statutes identifying incidents domestic violence as distinct crimes. See, e.g., *N.J. STAT. ANN.* § 2C:25-18 (Legislative Findings of Prevention of Domestic Violence Act of 1991) (Lexis Nexis 2012) (“even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes . . . [have resulted] in these acts receiving different treatment from similar crimes when they occur in a domestic context.”).


88 *Compare* CAL. PENAL CODE § 273.5(a) (felony provision) with ARIZ. REV. STAT. § 13-3601.02(A) (2012), KY REV. STAT. ANN. § 508.032 (West 2012), and TEX. PENAL CODE § 22.01 (2012) (establishing felony penalties for a third domestic violence conviction).

89 *Compare* ALA. CODE §§ 13A-6-90, -91 (2012) and IND. CODE ANN. § 35-45-10-5 (first offense stalking felony laws) with CAL. PENAL CODE § 646.9 and KY REV. STAT. ANN. §§ 508.130–150 (first offense stalking punished as either a felony or a misdemeanor).

90 *Compare* CONN. GEN. STAT. § 53a-40d (a second order violation is a felony) with MONT. CODE ANN. § 45-5-626 (a third order violation is a felony).
A. California

California’s domestic violence laws can be found in both the California Penal Code, governing the state’s law on arrest generally, as well as law enforcement’s response to domestic violence specifically, and the California Family Code’s protection of domestic violence victims and duties of law enforcement officers. California’s primary statute governing domestic violence is the Domestic Violence Prevention Act (DVPA).\(^{91}\)

The DVPA’s purposes are “to prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.”\(^{92}\) Its remedies “are in addition to any other civil or criminal remedies that may be available to the petitioner.”\(^{93}\) Such civil remedies include: protective orders;\(^ {94}\) tort action against a spouse;\(^ {95}\) civil relief for gender-related violence;\(^ {96}\) conciliation courts;\(^ {97}\) and domestic violence centers;\(^ {98}\) effects of domestic violence on spousal support;\(^ {99}\) insurance coverage of domestic violence victims;\(^ {100}\) name and address confidentiality for domestic violence victims;\(^ {101}\) and issuance of new license plates to domestic violence victims.\(^ {102}\) Criminal provisions include: “no drop” prosecution of domestic

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92 *Id.* § 6220.
93 *Id.* § 6227.
95 See generally Jennifer Wriggins, *Domestic Violence Torts*, 75 S. Cal. L. Rev. 121 (discussing domestic violence tort liability).
97 *Id.* §§ 1800–1842.
99 *Cal. Fam. Code* §§ 4320, 4325 (West 2012). See also *id.* § 3044 (requiring family courts to presume that giving custody to a perpetrator of domestic violence is detrimental to the child).
100 *Cal. Ins. Code* §§ 676.9, 10144.2, 10144.3. See also *Cal. Lab. Code* § 230 (providing that an employer may not discharge, discriminate, or retaliate against an employee who is a domestic violence victim and who takes time off work to “attempt to . . . ensure the health, safety, or welfare of a domestic violence victim or his or her child.”).
violence cases, punishment for battery against a spouse, cohabitant, parent of defendant’s child, former spouse, or person whom defendant is or has been dating, or whom defendant is engaged to marry; violation of a court domestic violence order; malicious disclosure of the location of a domestic violence shelter; stalking in violation of restraining order or emergency protective order; telephone harassment; appointment of county-level interagency domestic violence review teams designed to assist local agencies in identifying and reviewing domestic violence deaths; authority of peace officer to take temporary custody of firearms at scene of domestic violence; training of law enforcement officers to handle domestic violence complaints; law enforcement response to domestic violence; funding of local domestic violence programs; family violence prevention centers; and a comprehensive statewide domestic violence program.

B. Minnesota

Minnesota, likewise, also provides both civil and criminal remedies to victims of domestic violence. Minnesota’s Domestic Abuse Act delineates: how and when an order for protection will be granted, including ex parte orders; who is entitled to such orders, including spouses, former spouses, cohabitants, persons in a “significant romantic or sexual relationship”; the penalties for violating such orders; how law enforcement should enforce such orders; provisions to facilitate victims’ access to the legal system, including filing fee waivers and preventing public disclosure of the victim’s home address; and prohibition of employer retaliation against victims of domestic violence. Minnesota’s criminal statute defines domestic assault to include causing fear of immediate bodily harm or

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103 See generally Kalyani Robbins, Note, No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?, 52 STAN. L. REV. 205 (1999); see also CAL. PENAL CODE § 273.5 (West 2012).

104 CAL. PENAL CODE §§ 243(e); 273.5 (West 2012) (extending coverage of domestic violence criminal law to include former spouses and cohabitants).

105 Id. §§ 273.6, 836 (mandates arrest for restraining order violations).

106 Id. § 273.7.

107 Id. § 646.91.

108 Id. § 653(m).

109 Id. §§ 11163.3–11163.6.

110 Id. § 18250.

111 Id. § 13519.

112 Id. §§ 13700–13702.

113 Id. §13823.3.

114 Id. § 13823.4.

115 Id. §§ 13823.15, 13823.16. See also 11 WITKIN SUMM. CAL. LAW, H & W CH. XV, § 372.

116 MINN. STAT. ANN. § 518B.01 (West 2012).

117 Id.
death, as well as inflicting, or attempting to inflict, such harm. 118 It also increases penalties for repeated acts. 119 Minnesota has also enacted a separated domestic violence arrest law, allowing officers to arrest an individual without a warrant if there is probable cause to believe that the individual has committed domestic abuse. 120 In addition, officers are required to provide victims of domestic violence with notice of their legal rights. 121 Finally, Minnesota requires police departments to develop policies and protocols for dealing with domestic violence, and expressly requires officers to assist victims in obtaining medical treatment. 122

C. Wisconsin

To be covered by Wisconsin’s domestic violence legislation, a victim must be a spouse, former spouse, parent of the defendant’s child, or resident or former resident with the perpetrator; 123 the suspect must be at least 17 years old; 124 and the suspect must be engaged in delineated physical activity directed at the victim. 125 If these circumstances are met, law enforcement officers are required to arrest and take the perpetrator into custody if (1) the officer has reasonable ground to believe the person is committing or has committed domestic abuse, (2) those actions constitute a crime, and (3) the officer either: (a) has a reasonable basis for believing continued domestic abuse against the alleged victim is likely, (b) there is evidence of physical injury to the alleged victim, or (c) the suspect is the “predominant aggressor.” 126 An incident of abuse must be reported within 28 days of its occurrence for arrest to become mandatory. 127

Wisconsin law enforcement agencies are required to adopt certain policies for determining how they are going to respond to domestic violence incidents. Such policies are to include a statement that discourages, but does not prohibit, the arrest of more than one party, and a statement emphasizing that when determining whether to make an arrest, an officer should consider whether the party acted in self-defense or in defense of another person. 128 If an officer does not make an arrest when he or she has a reasonable belief that domestic abuse has occurred and these acts constituted a crime, the officer must file a report stating why the person was not arrested, which is then sent to the district attorney’s office of the county

118 Id. § 609.2242.
119 Id.
120 Id. § 629.341.
121 Id.
122 Id. § 629.342.
124 Id.
125 Id.
126 Id. §§ 968.075(2) (predominant aggressor means the most significant, but not necessarily the first, aggressor in a domestic abuse incident); 968.075(1)(c).
127 Id. § 968.075(2).
128 Id. § 968.075(3).
where the incident occurred. Following a mandatory arrest, the perpetrator is not permitted at the victim’s residence for 72 hours after the arrest, in addition to not having any contact with the victim. Should the perpetrator be released within 72 hours of arrest, law enforcement is required to notify the perpetrator of the no-contact provision and the consequences of violating it. Wisconsin also delineates a list of possible criminal violations in a domestic violence situation.

In summary, these three states make domestic violence a crime, do not recognize a spousal exemption for rape, provide for civil orders of protection in stalking cases with criminal penalties for their violation, and require written policies and procedures for the handling of domestic violence cases. Nevertheless, even these states have notable gaps in their domestic violence legislation, such as failing to mandate arrests in domestic violence cases despite the requirement for police incident reports. Thus, the problem of domestic violence persists despite even the most progressive education and legislation, as indicated by a review of Pennsylvania’s legislation on domestic violence.

D. Pennsylvania

Pennsylvania legislation does not include a separate domestic violence criminal statute or enhanced penalties for recurring domestic violence. There is no spousal sexual assault law; criminal contempt is the only remedy for violation of a court protective order; and there are only limited penalties for stalking. Further, there are no victims’ rights laws permitting a victim to file a complaint with police or gain access to a shelter; and there is no bar on firearm possession following conviction of simple domestic violence. Pennsylvania has neither a

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129 Id. § 968.075(4).
130 Id. § 968.075(5).
131 Id.
132 Id. § 973.055. However, most victims of gender-based violence in Wisconsin are not covered by a civil statute explicitly providing them with the right to file a lawsuit against a perpetrator.
134 But see MO. REV. STAT. § 566.023 (2011); WASH. REV. CODE ANN. § 9A.44.010 (West 2012) (limited marital exemption exists in sexual assault cases involving a spouse).
135 CAL. FAM. CODE § 6320 (West 2012); CAL. PENAL CODE § 136.2 (West 2012); MINN. STAT. ANN. § 609.748(5)–(6) (West 2012); WIS. STAT. ANN. § 940.20(1m)(b) (West 2012).
136 CAL. PENAL CODE § 13519(a); (West 2012); MINN. STAT. ANN. § 629.342(2) (West 2012); WIS. STAT. ANN. § 968.075(3) (West 2012).
137 Miller, supra note 85, at 53.
139 23 PA. CONS. STAT. ANN. § 6114(b) (West 2011).
140 18 PA. CONS. STAT. ANN. § 2709.1 (West 2011) (misdemeanor for first offense and third degree felony for a second or subsequent offense).
mandatory nor a preferred arrest provision for domestic violence, nor a primary aggressor policy.\textsuperscript{141} While officers are required to provide a notice of rights under the state Victims Rights Act,\textsuperscript{142} and notice of rights to a protective order and shelter availability,\textsuperscript{143} officers are not required to: assist victims in obtaining medical help, transportation to a shelter, or removal of personal possessions from the property; or seize weapons on the premises when they have been used, or were threatened to be used, in violation of a protective order.\textsuperscript{144} While local police agencies are required to establish written policies and procedures with respect to domestic violence,\textsuperscript{145} there are no mandated training provisions for prosecutors or police, even for cases where the victim is a non-cooperating witness.

This cursory review of only four states indicates the wide disparity among state legislation addressing domestic violence. Even the most proactive states have holes in providing remedies and protection for victims of domestic violence (assuming, of course, that all laws currently on the books are being well-enforced). Thus, even the states that come closest to a comprehensive statutory approach have failings in both passage and enforcement. To follow Topeka’s example of decriminalizing some domestic violence would, without question, be a step backwards in creating a complete approach to addressing domestic violence, not only in the justice system but in our society as a whole, as detailed in the next Parts.\textsuperscript{146}

V. THE ECONOMICS OF DOMESTIC VIOLENCE

A. Healthcare and Workplace Economics of Domestic Violence

With the economic recession, rising health care costs, persistent unemployment rates, and lower health care coverage, the economic costs of domestic violence are becoming a greater concern to not only the victims, but also their families, communities, employers and governments.

\textsuperscript{141} See 18 PA. CONS. STAT. ANN. § 2711 (West 2011) (including arrest at the officer’s discretion in domestic violence cases involving recent physical injury or corroborative evidence.). But see 23 PA. CONS. STAT. ANN. § 6113(a) (West 2011) (mandates arrest for a violation of a court protective order).
\textsuperscript{142} 18 PA. CONS. STAT. ANN. §§ 11.101–11.5102 (Crime Victims Act).
\textsuperscript{143} Id. § 2711(d); 23 PA. CONS. STAT. ANN. § 6105(b) (West 2011).
\textsuperscript{144} 23 PA. CONS. STAT. ANN. § 6113 (b) (West 2011).
\textsuperscript{145} Id. § 6105(a).
\textsuperscript{146} See, e.g., H.B. 1581, 1608, 2012 Leg., Reg. Sess. (N.H. 2012) (pending legislation which have this same limiting effect by (1) preventing police officers from arresting someone for domestic violence or any other crime unless the officer witnessed the offense or obtained a warrant from a judge; (2) limiting type of crimes police officers could use to arrest someone for violating a domestic violence order; and (3) eliminating state background checks for arrests and domestic violence orders when an individual is purchasing a gun).
Nationally, domestic violence results in an estimated 2 million injuries to women, 580,000 injuries to men, and 1,500 deaths annually.\textsuperscript{147}

Eighty-one percent of women who experienced rape, stalking or physical violence by an intimate partner reported significant short-or long-term impacts such as Post-Traumatic Stress Disorder (PTSD) and injury, while 35% of men report such impacts of their experiences.\textsuperscript{148}

Women who experienced rape or stalking by any perpetrator, or physical violence by an intimate partner, were more likely than other women to report having asthma, diabetes, and irritable bowel syndrome.\textsuperscript{149}

Men and women who experienced these forms of violence were more likely to report frequent headaches, chronic pain, difficulty sleeping, activity limitations, poor physical health and poor mental health.\textsuperscript{150}

“The cost of domestic violence to the U.S. economy [exceeds] $8.3 billion. This . . . includes medical care, mental health services, and lost productivity (e.g. time away from work).”\textsuperscript{151}

Domestic abuse costs employers $727.8 million annually in lost productivity, with 7.9 million paid workdays lost each year\textsuperscript{152} (the equivalent of losing 32,000 full-time jobs).\textsuperscript{153}

“The health-related costs of rape, physical assault, stalking, and homicide by intimate partners exceed $5.8 billion [annually, with almost] $4.1 billion . . . for direct medical and mental health care services . . . .”\textsuperscript{154}

“[H]ealth care costs associated with each incident of domestic violence [averaged] $948 in cases where women were the victims and $387 in cases where men were the victims.”\textsuperscript{155}


\textsuperscript{148} CTRS. FOR DISEASE CONTROL, supra note 54.

\textsuperscript{149} Id.

\textsuperscript{150} Id.


\textsuperscript{152} Id. (citing U.S. DEP’T HEALTH & HUMAN SERVS. ET AL., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 19 (2003)).

\textsuperscript{153} Id. (citing BUREAU OF NAT’L AFFAIRS, SPECIAL REP. 32, VIOLENCE AND STRESS: THE WORK/FAMILY CONNECTION (1990)).

\textsuperscript{154} Id. (citing U.S. DEP’T HEALTH & HUMAN SERVS. ET AL., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2003)).

\textsuperscript{155} Id. (citing U.S. DEP’T HEALTH & HUMAN SERVS. ET AL., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 2 (2005)). This included $483 in medical costs, $207 for mental health services costs, and $257 in productivity losses for women and $83, $80 and $224 respectively for men.
Women experiencing ongoing physical abuse average 42% higher health care costs (an average $585 greater per year) than non-abused women.156

“After the abuse ended, health costs were $1,231 higher in the first year, $1,204 higher the second year, and $444 higher the third year.”157

Women not currently abused, but who had been physically abused within the last five years, had 24% higher yearly health costs. Abuse that occurred more than five years ago resulted in 19% higher costs.158

Women suffering psychological abuse within the past five years, but not currently, had yearly health care costs that were 33% higher than those of non-abused women.159

Women suffering ongoing physical abuse were about 2.5 times more likely to visit a mental health provider in the past year than non-abused women. The rate of psychologically abused women was two times higher.160

Physically abused women used significantly more primary care, pharmacy, specialty care, laboratory, and radiology services.161

Nearly 5.6 million days of household productivity are lost each year due to domestic violence.162

As these statistics demonstrate, domestic violence is very costly in the short- and long-term and affects all of society—a point those in government often overlook.

B. Social Costs of Domestic Violence

In addition to the previously enumerated health and workplace costs, there are a number of other economic costs associated with domestic violence:

- Law enforcement and judicial costs, including police personnel, judicial personnel, jail housing costs and victim compensation.163


157 Id.


159 Id.

160 Id.

161 Id.


• Social services provided to both victims and perpetrators, whether publicly or privately funded.\(^\text{164}\) This includes potential social welfare payments such as housing or food assistance for women who leave abusive situations, as well as hotlines and shelters.\(^\text{165}\) Also included are the extensive volunteer hours associated with these agencies.\(^\text{166}\)

• Education costs can be incurred by victims who need training to re-enter the workplace and educational programs to reduce the incidence of domestic violence.\(^\text{167}\)

• Governmental costs associated with research, administration and analysis of current, pending, and proposed legislation related to domestic violence.\(^\text{168}\)

• Finally, the long-term costs associated with second-generation victims, i.e. children who witness domestic violence.\(^\text{169}\)

When taken together, all of these costs are substantial but rarely quantified. Even without taking into consideration such unquantifiable losses such as pain and suffering, the impact of the dollars spent after an incident of domestic violence is staggering and, again, frequently ignored by those in government.

C. Cost-Effective Programs Related to Domestic Violence

While ample private and government studies demonstrate the stunning adverse impact that domestic violence has on our economy, there are also a number of studies that demonstrate a continuing “return on investment” for dollars spent in education, intervention, treatment and prevention of domestic violence.\(^\text{170}\)

• A 2004 report by the World Health Organization emphasized both the extreme adverse economic impact of domestic violence and the benefits and cost-effectiveness of programs designed to prevent domestic violence.\(^\text{171}\)

• A cost-benefit analysis estimated that the 1994 Violence Against Women Act has “saved $14.8 billion in net averted social costs,” with an

\(^{164}\) Id. at 9.

\(^{165}\) Id. at 12.

\(^{166}\) Id. at 9.

\(^{167}\) Id.

\(^{168}\) See id. at 15.

\(^{169}\) Id. at 13.


estimated cost of “$15.50 per U.S. woman and [an expected savings of] $159 per U.S. woman in averted costs associated with victimization.”\footnote{172}  

- A 2009 Department of Justice study of Kentucky civil protection orders showed a savings of $85 million in a single year in averted costs associated with domestic violence, including property damage, services, and lost productivity.\footnote{173}  

- The 1984 Minneapolis Domestic Violence Experiment demonstrated a 50% reduction in a perpetrator’s subsequent offenses when the perpetrator was arrested in response to the original misdemeanor domestic violence assault charge, whether for assault, attempted assault, or property damage.\footnote{174}  

When combined with the overwhelming evidence demonstrating the serious economic consequences of domestic violence, these studies clearly demonstrate the continuing need for preventive programs and ongoing enforcement of domestic violence laws.

VI. CONCLUSION

As set forth herein, civil and criminal remedies exist in every state to both address and redress incidents of domestic violence. The failure to prosecute offenses and enforce remedies has been shown to be costly, both in terms of dollars, lost productivity and human loss. If decriminalization of domestic violence becomes the trend as a means to deal with budgetary shortfalls, governmental agencies will be left an even greater deficit when faced with the monetary aftermath following such incidents. When looking at the puzzle as a whole, it is clear that the economic and social losses, along with possible ensuing litigation prompted by failure to enforce state remedies, far outweigh the cost of pursuing and enforcing legislation already on the books. Topeka and Shawnee County, Kansas, may well become the standard NOT to follow when dealing with domestic violence.

